IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER NO.415 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAUHAN JAYANTILAL SANKALCHAND & ORS.

Versus

RAMDAS DHANJIDAS PRAJAPATI
(SINCE DECEASED THROUGH HIS HEIRS)

Appearance:
1. Appeal from Order No. 415 of 2003
MR. N.V. ANJARIA for Appellants
MR. D.C. DAVE for Respondents

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 10/08/2004

COMMON ORAL JUDGEMENT

1. Admit.

Mr.D.C.Dave, learned Advocate, appears and waives service of process of admission on behalf of the respondents.

With the consent of the learned Advocates for the parties, the matter is taken up for final disposal.

2. The appellants, forty in number, original defendants, have approached this Court being aggrieved of order dated 14th February, 2003 passed by the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) below Exh.5 in Special Civil Suit No.27 of 2002 whereby the learned Judge was pleased to partly allow the application of the plaintiffs and was pleased to vary the order of interim injunction passed on 31st January, 2002 saying that status quo be maintained qua Survey No.230 of Village-Gota admeasuring 0 Acre 62 Gunthas, which is in possession and occupation of the plaintiffs till the final disposal of the suit.

But then, the case of the plaintiffs in the plaint and the application for injunction (in paragraph-1), is that the plaintiffs are the owners of only 9 Gunthas of land bearing Sub-Plot No.7 of Revenue Survey No.230 of Village-Gota. Thus, there is an apparent error on the part of the learned Judge in granting order of status quo qua the entire Revenue Survey No.230 of Village-Gota. Even on this short ground, the appeal deserves to be allowed. But then, as the matter is remanded with the directions, this aspect is not required to be gone into. The matter requires reconsideration at the hands of the learned Judge in the presence of the State Government. Hence, after the plaintiffs join the State Government as party defendant in the suit proceedings, the learned Judge shall consider the case again and pass fresh order. To avoid any further complications in the matter, it is felt that it would be in the interest of justice if the present appellants are allowed to file an application under second proviso to Rule-4 of Order XXXIX of the Civil Procedure Code. The learned Judge shall take into consideration such application and decide the matter afresh. The learned Judge is, therefore, directed to pass a fresh order on Exh.5-Application after the State Government is joined as party defendant and an application is made by the defendants under second proviso to Rule-4 of Order XXXIX of the Civil Procedure Code.

3. This Appeal From Order is allowed and disposed disposed of with the aforesaid directions.

4. In view of the disposal of the Appeal From Order, Civil Application No.8283 of 2003 does not survive and

the same is disposed of accordingly. Notice is discharged.

(Ravi R. Tripathi, J.)
kamlesh*